THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.14989 OF 2004

O R D E R

Heard Sri D.V.Sitaram Murthy, learned Senior Counsel for the writ petitioner, Standing Counsels for respondents 1 and 2 – Visakhapatnam Urban Development Authority (VUDA) and the Municipal Corporation of Visakhapatnam, Government Pleader for Municipal Administration and Urban Development for 3rd respondent and the Government Pleader for Revenue for the 4th respondent.

2. This writ petition is filed for a writ of Mandamus declaring the occupation of the petitioner's property over an extent of 5,000 sq. mts. in T.S.No.125, Block No.16, Waltair Ward, Visakhapatnam by the respondents, as unauthorized, illegal and violative of Articles 14 and 300-A of the Constitution of India and consequently direct the respondents to pay compensation the petitioner by initiating appropriate proceedings.

3. The case of the petitioner, as stated in the writ affidavit, is that T.S.No.125 part of Block No.16 of Visakhapatnam, measuring Acs.9-40 cts. is the ancestral property of the petitioner. The petitioner's ancestors and their successors including the petitioner herein, were in possession and enjoyment of the said property. The Assistant Settlement Officer, Anakapally, declared that the said land comes under Section 19 of the Estates Abolition Act, 1948. The District Collector, Visakhapatnam approved the said recommendation of the Assistant Settlement Officer vide his proceedings R.D. 12885/62 dated 24.8.1962. However, the Tahsildar, Visakhapatnam initiated action for the cancellation of ground rent patta issued in favour of the petitioner's ancestors. Hence a writ petition in W.P.No.406/1966 was filed questioning the said action of the Tahsildar in issuing the notice in R.P.No.80 of 1966 dated 12.2.1966 for cancellation of ground rent patta. This court by its judgment dated 13.6.1968 declared that the Tahsildar, Visakhapatnam, has no jurisdiction to revise the order of the Assistant Settlement Officer, to cancel the patta and accordingly disposed of the writ petition. Thereafter, the Tahsildar, Visakhapatnam, filed revision petition before the Commissioner, Survey Settlements and Land Records. This revision petition was dismissed on 24.10.1981. Against the said dismissal order in the revision petition, the Tahsildar, Visakhapatnam, moved the Government by filing a further revision petition. The Government rejected the Revision Petition under G.O.Rt.No.9 dated 25.1.1994 and

thus the issue of title was finally settled in favour of the petitioner's ancestors and their successors, including the petitioner herein.

4. It is stated that all these years the authorities were wrongly claiming that the land in question was a Government land. It is further stated that the declarations filed by them before the Special Officer and Competent Authority, Urban Land Ceiling Act, were kept pending at the instance of the revenue authority.

5. In the year 1980, the 3rd respondent – The Government of Andhra Pradesh, Municipal Administration and Urban Development, represented by its Secretary, accorded approval to the plans prepared by the 1st respondent – Visakhapatnam Urban Development Authority, for laying of 100" wide road through the land in issue. Accordingly, the 2nd respondent – Municipal Corporation of Visakhapatnam, represented by its Commissioner, laid roads covering an extent of Acs.3-00 cts. None of the respondents issued any proceedings under any law for acquiring the said land.

6. While one kind of authorities, who are hands of the State have raised dispute after dispute with regard to the title of the land in issue, the other kind of authorities, who are also the hands of the same State, without any process, procedure and authorization, took over the land and laid road. It is stated that the whole of the interested parties, including the petitioner herein were too small before the mighty State to stop the laying of the said road. The petitioner along with interested parties reconciled to the situation and approached the authorities for compensation in accordance with law. Even repeated representation to the authorities did not yield any result.

7. While the things stood thus, the 3rd respondent – Government issued memo No.7144/12/95-2MA dated 25.5.1995, rejecting the claim of compensation on the sole ground that the land covered by the said land is declared as surplus land. This stand was untenable both on facts and law. Under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (for short 'the ULC Act'), land earmarked for laying the road, ceases to be vacant land and only such lands, over which buildings are permitted to be constructed, will come within the purview of the said Act. That apart, as on the date of the laying of the road, no final orders were passed by the Special Officer and Competent Authority, ULC, Visakhapatnam in the relevant urban land ceiling cases. Therefore, the question of any portion of land vesting in the Government under the provisions of the Act, does not arise. Further, in view of the

fact that the final orders under the Act were still pending before the authorities, the petitioner herein along with other parties interest in the land in issue, approach this court by filing writ petition in W.P.No.4398/1996, questioning the said Government memo and seeking compensation for the lands. This court disposed of the said writ petition on 1.5.1997 directing the Special Officer to consider the objections of the petitioners.

8. The Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam in C.C.No.2449/76, 2450/76/C2 & 7041 to 7047/81 passed order dated 7.12.2001 wherein at page no.22 of the order, held as follows:

> "In consideration to the above position I am inclined to exclude the extent of 5000 sq. mts covered by 100' Master Plan road from the holding of the family members of (late) V.Chandra Choodamani Deo and accordingly the objection is allowed."

9. It is further stated that the petitioner herein vide his representation dated 15.5.2002 requested the 1st respondent - VUDA for payment of compensation. The 1st respondent – VUDA has not only failed to pay the compensation, but also did not bother to inform the petitioner of any action on the representation. The petitioner herein cannot invoke any provisions of the Land Acquisition Act as the authorities have not issued any proceedings under the said Act. The action of the respondent in taking over the land of the petitioner over an extent of 5000 sq. mts. in T.S.No.125, is without authorization, unlawful and infringes the rights of the petitioner guaranteed under Article 300-A of the Constitution of India. The further case of the petitioner is that if any land is required for the Government, the Government issues appropriate proceedings and acquires the land by paying appropriate compensation. However, in the case of the petitioner, the respondents have not issued any proceedings for the purpose of acquiring the land. Hence, the present petition.

10. The Vice Chairman of the 1st respondent – VUDA, filed counter affidavit, and stated that the subject land in question was earmarked for road in the master plan and hence the 1st respondent had written to the Government of Andhra Pradesh, Municipal Administration and Urban Development i.e., the 3rd respondent in the year 1980 for laying of 100" feet wide road through the land in issue as the above said land was claimed to be Government land as per records. Subsequently, the 3rd respondent approved the plans prepared by VUDA and the 2nd respondent – GVMS laid roads in the above land covering an extent of Acs.3-00 cents. Any

grievance of the petitioner as to the compensation that is to be paid, has to be addressed to the 2nd respondent who laid road covering an extent of Acs.3-00 cents. The 1st respondent – VUDA only got Government approval from the 3rd respondent for plans for laying 100" wide road through the land in issue as the land was earmarked for the purpose of road in the master plan of Visakhapatnam. It is further stated that VUDA is not the authority to address any dispute with regard to the title of the land is issue, as it was earlier claimed to be Government land and the petitioner had filed objections before the Special Officer and competent authority ULC Visakhaptnam aggrieved by the decision of the Tahsildar Visakhapatnam who had initiated action for the cancellation of ground rent patta issued in favour of the petitioner's ancestors and their successors. There was a series of litigation between the Government and the petitioner regarding the issue of title to T.S.No.125, part of Block No.16, Waltair Ward, Visakhapatnam measuring Acs.9-40 cents. Further, the Special Officier and Competent Authority, Urban Land Ceiling, Visakhapatnam, in C.C.No.2449 / 1976, 2450 / 1976 / C2 and 7041 to 7047 / 81 passed order dated 7-12-2001 where the operative portion reads as thus " In view of the above computation and allowances, the declarant Smt. V.Rupa Manjari Devi w/o late V.Chandra Chudamani Deo is declared as surplus land holder to an extent of 2823 sq. mts in Sy.No.125/part of Waltair Ward". This respondent is not aware whether the Government preferred any appeal against the above said orders. It is denied that the VUDA has not acted on the representation of the petitioner dated 15.5.2002. The 1st respondent as a matter of fact, verified in the ULC Department, Collectorate, Visakhapatnam as to whether any notification under Section 10(3) and (5) of the ULC Act were issued in the subject matter of the land to an extent of 5000 sq. meters in T.S.No.125, Block No.16, of Waltair Ward, which was earmarked for road as per master plan, for which , the petitioner is seeking compensation. It has been ascertained that 10(3) notification was already process for publication by the Government printing press at Hyderabad and it was recorded as "publication awaited". The 1st respondent was also informed that the concerned files were sent to the Vigilance Department and not readily available to locate the said papers. Hence, the matter is being taken up with the ULC Department separately to make available the said information. It is further stated that regarding the amount of compensation to be paid with reference to the land in issue and other subsequent developments, have to be addressed by the other respondents, as it was the Government, which had dealt with the title dispute and further GVMC is liable to pay compensation, if any, for having laid the road in the above said land and the 1st respondent had only got approval for the plans for laying road by the Government of

Andhra Pradesh, M.A. and U.D. as the above land was earmarked for the purpose of road in the master plan of Visakhapatnam. With these averments, the writ petition was sought to be dismissed.

11. The Commissioner of the 2nd respondent – Greater Visakha Municipal Corporation, Visakhapatnam, filed counter filed and stated that the present writ petition was dismissed at the stage of admission on 25-8-2004. Challenging the same, the petitioner filed writ appeal in W.A.No.1479/2004 against the respondents therein and the Court by order dated 12-9-2011 was pleased to allow the writ appeal setting aside the order of the learned single Judge and remanded the matter for fresh disposal after VUDA and other respondents file their counters. It is stated that 100 feet wide road under reference was not laid by 3rd respondent – Corporation. The writ petitioner in the affidavit has also not alleged that the road is laid by 2nd respondent – Corporation and also did not seek any relief from the respondent – Corporation. Therefore, question of payment of compensation by this respondent – Corporation for the land affected in formation of said road, does not arise. However, it is humbly submitted that the contention of the writ petitioner that "once the land cannot be treated as vacant land as held by the competent authority, petitioner still continues to be owner, but he cannot be deprived of the said land without acquiring and paying compensation is unauthorized, illegal and violative of Article 14 and 300-A of the Constitution of India", is not correct. Further, it is submitted that the petitioner cannot have an advantage of excluding the lands from the ceiling on the ground that the lands were taken possession of by the respondents for the purpose of roads which cannot be computed to his holdings as vacant land and the same has to be excluded from his holding. After obtaining benefit of such exclusion, he cannot turn around and say that he is entitled for compensation for the lands which were excluded from holdings and which were in possession of the respondents. The very filing of writ petition and contention of the petitioner that the respondents possession is unauthorized, is nothing but speculative in nature. It is eventually stated that the Greater Visakhapatnam Municipal Corporation is not the authority to address any dispute with regard to the title of the land in issue. With these averments, the writ petition was sought to be dismissed.

12. Though the matter is of the year 2004 and the matter has been remanded by the Division Bench on the grounds that counters were not filed, the other respondents did not choose to file counter affidavits and hence, the matter is taken up for disposal on merits and based on the material available on record.

13. The learned Senior Counsel appearing for the writ petitioner submitted that as per the averments made in the writ affidavit which are not disputed, the title of the petitioner's ancestors and their successors and that of the petitioner over the subject land attained finality. The petitioner and his family members filed declarations under Section 6(1) of the Act and after allowing the holdings entitled to under the Act to each of the declarent, the surplus land was sought to be taken by issuing notice under Section 10(5) of the Act. During the pedency of proceedings, the 1st respondent – VUDA laid 100" wide road. The petitioner, along with other interested persons, claimed compensation from the 3rd respondent – Government. By memo No.7144/12/95-2MA dated 25.5.1995, the claim for compensation was rejected on the ground that the land covered by the road is declared as surplus land.

The learned Senior Counsel referring to Section 2(q) of the Act stated that where the land over which no building is permissible under the buildings regulations in force, cannot be treated as vacant land and will not come under the purview of the Act and if such land, belonging to the petitioner, which is earmarked for road in the master plan and over which a road was laid, the petitioner is entitled for compensation and such land, which is not vacant, cannot be declared as surplus. He stated that the memo dated 25.5.1995 was issued during the pendency of ULC proceedings before the competent authority. Therefore, aggrieved by the said memo, the petitioner and others challenged the memo dated 25.5.1995 issued by the 3rd respondent – Government in W.P.No.4398/1996 and by order dated 1.5.1997, this court directed the Settlement Officer to consider the objections raised by the petitioners and pass orders. In compliance of the directions of this court, the Special Officer and Competent Authority, Urban Land Ceiling Visakhapatnam in proceedings dated 7.12.2001 excluded an extent of about 10,000 sq. mts. covered by 100' master plan road from the family holdings of late V.Chandra Choodamani Deo, who is the father of the petitioner and other family members and out of said extent of 10,000 sq. mts., 5,000 sq. mts. fell to the share of the father of the petitioner and thus the Special Officer, allowed the objections of the petitioner and others. He stated that challenging this order dated 7.12.2001, no appeal has been filed and the said order attained finality. Therefore, the land of the petitioner, which does not form part of vacant land, is a non-surplus land and if the same is utilized by the VUDA, the petitioner is entitled for compensation. When the petitioner made representation dated 15.5.2002 for compensation, the 1st respondent failed to respond and hence the present writ petition is filed for a direction to the respondents to initiate appropriate land acquisition proceedings and to pay compensation as per

law. When a learned single Judge of this court dismissed the present petition at the admission stage, the petitioner carried the matter in appeal in W.A.No.1479/2004 and by order dated 12.9.2011 the Division Bench accepted the contention of the petitioner and held that *"When the land owned by a declarent situated in the urban agglomeration cannot be considered as vacant land, the declarent is entitled to seek its exclusion from the holding. It will be free from all encumbrances and if the land is taken by VUDA the person deprived of the land is entitled for compensation."* However, as the writ petition was dismissed at the stage of admission, and no counter affidavits were filed, remitted matter back to the learned single Judge for fresh disposal. He stated that even in the counter affidavits filed by the respondents, there is no denial of these facts and hence, sought to direct the respondents to initiate land acquisition proceedings under the Land Acquisition Act, and pay appropriate compensation in accordance with law.

14. On the other hand, the learned counsel appearing for the respondents contended that the petitioner claimed exemption on the ground that the subject land is not vacant land and again he is seeking compensation for the said land, on which road is laid and hence the petitioner is not entitled for compensation. Alternatively, the learned counsel appearing for the 2nd respondent – GVMC contended that it is the 1st respondent – VUDA, which laid the road and the Corporation is only maintaining the roads and hence the Corporation cannot be directed to pay compensation to the petitioner. On the other hand, the learned Standing Counsel for VUDA stated that as GVMC laid the road, it has to pay the compensation. With these contentions, the writ petition was sought to be dismissed.

15. In view of the above rival contentions, the issue that arises for my consideration, is whether the respondents are not justified in initiating the land acquisition proceedings under the Land Acquisition Act, 1894, having taken the land and laid 100' wide beach road in the land of the petitioner to an extent of 5000 sq. mts in T.S.No.125 Block No. 16, Waltair Ward, Visakhapatnam, which is excluded from the holdings of the petitioner by the Special Officer and Competent Authority, Urban Land Ceilings, Visakhapatnam under proceedings dated 7.12.2001?

16. From the writ averments, it could be seen that the case of the petitioner is that an extent of Acs.9-40 cents in T.S.No.125 part of Block No.16 of Visakhapatnam, was the ancestral property of the petitioner and that they were in possession and enjoyment of the said extent. The Assistant Settlement Officer, Anakapally recommended to the District Collector stating that the said lands comes

under Section 19 of the Estates Abolition Act, 1948, and the District Collector, Visakhapatnam approved the said recommendations in proceedings R.D.12885/62 dated 24.8.1962. When the Tahsildar, Visakhapatnam initiated proceedings for cancellation of ground rent patta issued in favour of the ancestors of the petitioners by issuing notice in R.P.No.80/1966, a writ petition in W.P.No.406/1966 was filed and this court by order dated 13.6.1968 declared that the Tahsildar, Visakhapatnam has no jurisdiction to revise the order of the Assistant Settlement Officer. It is further stated that the Tahsildar, Visakhaptnam filed revision petition before the Commissioner, Survey Settlements and Land Records and the said revision was dismissed on 24.10.1981 and aggrieved by the same, Tahsildar, Visakhaptanm filed revision before the Government and by G.O.Rt.No.91 Revenue (JA) Department dated 25.1.1994, the revision was dismissed. The petitioner filed a copy of the said G.O. along with the material papers. Thus the issue of title was finally settled in favour of the petitioner's ancestors and their successors including the petitioner herein. These averments were not disputed by the respondents.

17. Consequent to the commencement of the ULC Act, the petitioners and his family members filed declarations under Section 6(1) of the Act before the Special Officer and Competent Authority, Urban Land Ceilings, Visakhapatnam in C.C.Nos.2449/76, 2450/76, 7041, 7042/81, 7043/81, 7044/81, 7045/81, 7046/81 and 7047/81 for their share in the land measuring to an extent of Acs.9-28 cents in Sy.No.125 of Waltair ward and draft statement under Section 8(1) was issued and final statement under Section 9 of the Act was issued to all the declarents conferring the extents determined as surplus in the draft statement under Section 8(1) of the Act and later on after notifications under sub sections 1 and 3 of Section 10, notification under Section 10(5) was issued to surrender the determined surplus extents. These ULC proceedings at this stage are pending.

18. In the master plan, the subject land was earmarked for road and, therefore, the 1st respondent – VUDA, sent proposals in the year 1980 for laying of 100" feet wide Beach road through the subject land and after it was approved, the 2nd respondent – GVMC laid road. The respondents have not produced any material to show that before laying the road, any land acquisition proceedings have been issued, or that any notices have been issued to interested persons, since the land over which the road was laid, was the subject matter pending before the Special Officer under ULC Act. The 3rd respondent – Government rejected the claim by memo No.7144/12/95-2MA dated 25.5.1995. The claim of the petitioners herein and other interested persons was that under the provisions of the

ULC Act, land earmarked for laying the road ceased to be vacant and only such lands over which buildings are permitted to be constructed, will come within the purview of the said act and that as the proceedings under Section 6 of the Act have been pending, the question of vesting the land with the Government does not arise. Raising these grounds, the petitioner and others challenged the rejection memo dated 25.5.1995 in a writ petition in W.P.4398/1996 and by order dated 1.5.1997, the learned single Judge disposed of the writ petition and the operative portion of the order reads as under:

> "I am not prepared to enter into the merits of the matter and issue directions for payment of compensation for the lands in question, which has been taken over by the respondent – VUDA. It is true that the objections have been taken after the declarations filed by the petitioners have been disposed off and no appeal has been filed. The objections taken by the petitioners relating as to whether the land in question was to be computed as 'land' within the holding of the petitioners as 'vacant land' or whether it was liable to be excluded in view of the fact that it was shown as road in the master plan. How far the objections are tenable is a matter to be decided by the Special Officer. Admittedly, notices have been issued to the petitioners in 1996 to consider the objections raised by them. Whether the objections are at all maintainable, it is for the authority to consider. Unless the objections are considered and allowed, the petitioners are not entitled to claim compensation as claimed by them in this writ petition."

19. A reading of the above judgment makes it clear that the learned single Judge directed the Special Officer to consider the objections raised by the petitioners therein and pass orders and held that unless the objections are considered and allowed, the petitioners are not entitled to claim compensation as claimed by them in the writ petition.

20. In obedience to the directions of this court, the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam in C.C.No.2449/76, 2450/76/C2 & 7041 to 7047/81 dated 7.12.2001, allowed the objections raised by the petitioners therein and excluded the subject land from the holdings of the family members. The objections raised by the petitioner and the consideration by the Special Officer, is extracted as under, for better appreciation:

> **"Objection No.2**: The contention of the declarents in this objection is that out of the extent of 36,627.36 sq. mts. devolved on the family members of (late) V.Durga Prasad Veerabhadra Deo and (late) V.Chandra Choodamani Deo in equal shares, an extent of 10,157.20 sq. mts., is covered by 100' beach road laid by V.U.D.A., in the year 1980 having been earmarked for road in the Master Plan prepared by the then Town Planning Trust vide Map No.4, TP.No.59/65. Out of the total extent i.e., 5078.60 sq. meters devolved on the family members of late V.Chandra Choodamani Deo and hence sought for exclusion of the extent.

According to Section 2(q)(i) of Urban Land (C&R) Act, 1976 land on which construction of a building is not permissible under the building regulations in force in the area in which the land is situated is not a vacant land within the meaning of Section 2(q) of the Act.

Further, the Government vide Memo No.2982/UC.I/81-1/Revenue (UC.I) Department dated 11-11-1981 have clarified that the land in which construction of a building is not permissible under the building regulations in force, is excluded from the definition of vacant land as per Section 2(Q) of the Act. The Commissioner of Land Reforms & Urban Land Ceiling, Andhra Pradesh, Hyderabad also clarified in Ref.No.UC.I/425/91 dt. 13-6-91 that if the land is classified in the Master Plan as a road or any other classification, wherein according to building regulation, construction of a building is prohibited, the provisions of Section 2(q)(i) would apply.

I have verified the Xerox copy of Map No.4, T.P.No.59/65 placed before me in which 100' Beach road has been earmarked in the land devolved on late V.Durga Prasad Veerabhadra Deo and Late V.Chandra Choodamani Deo. To arrive at the exact extent on which the 100' Beach road has been formed by V.U.D.A., the special surveyor of this office has been directed to verify the land covered by road portion and to report. According to his report the land covered by 100' Beach road laying within the share of (late) V.Durga Prasad Veerabhadra Deo and (Late) V.Chandra Choodamani Deo is exactly one hector i.e., 10,000 sq. meters.

As per the past partition dt. 14-6-1981 the land covered by road has to be shared by the family members of (Late) V.Durga Prasad Veerabhadra Deo and (Late) V.Chandra Choodamani Deo in equal shares as such the extent of 5000 sq. meters devolve on the family members of (late) V.Chandra Choodamani Deo.

In consideration to the above position, I am inclined to exclude the extent of 5000 sq. mets. covered by 100' Master Plan road from the holdings of the family members of (Late) Chandra Choodamni Deo and accordingly the objection is allowed."

21. A reading of the above order of the Special Officer, it could be seen that the contention of the declarents in the above objection is that out of an extent of 36,627.36 sq. mts., devolved on the family members of (late) V.Durga Prasad Veerabhadra Deo and (late) V.Chandra Choodamani Deo, in equal shares, an extent of 10,157.20 sq. mts., is covered by 100' beach road laid by VUDA in the year 1980, having been earmarked for road in the master plan and out of the said total extent of 10,157.20, an extent of 5,078.60 sq. mts. devolved on the family members of late V.Chandra Choodamani Deo. The Special Officer on verification of the Xerox copy of the Map no.4,T.P.No.59/65 found that 100' beach road has been earmarked in the land devolved on late V.Durga Prasad Veerabhadra Deo and late V.Chandra Choodamani Deo and also based on the material found that 100' beach road was laid within the share of (late) V.Durga Prasad Veerabhadra Deo and (late) V.Chandra Choodamani Deo, and it is exactly one hector i.e., 10,000 sq. mts. The contention before the Special Officer for exclusion was that as per 2(q)(1) of the

ULC Act, land on which construction of a building is not permissible under the building regulations in force in the area in which the land is situated, is not a vacant land within the meaning of Section 2(q).

The Special Officer, considering Section 2(q) of the Act and memo of the Government dated 11.11.1981 and also the clarification issued by the Commissioner of Land Reforms & Urban Land Ceiling, Andhra Pradesh, Hyderabad dated 13-6-1991, and also considering the partition dated 14.6.1981, whereunder the land covered by road has been shared by the family members of (late) V.Durga Prasad Veerabhadra Deo and (late) V.Chandra Choodamni Deo in equal shares as such the extent of 5000 sq. mts. which devolved on the family members of (Late) Chandra Choodamani Deo, was excluded from the holdings of the family members of (late) V.Chandra Choodami Deo and objection in this regard was allowed. The above order of the Special Officer dated 7.12.2007 has attained finality, as no material is produced by this court showing that any appeal has been filed and on the other hand, the specific case of the petitioner is that no appeal has been filed and subsequently, the ULC Act itself was repealed by enactment of Urban Land (Ceiling and Regulation) Repeal Act, 1999.

22. When the land to an extent of 5000 sq. mts. was excluded from the family holdings of the petitioner, as road was laid by VUDA as the said land was earmarked for road in the master plan and over which no building permission can be granted, it ceases to be vacant land as defined under Section 2(q) of the Act. The Special Officer in the above extracted portion has also clarified this position by taking into consideration the circulars issued by the Government in that regard, and accordingly excluded the said land from the holdings of the family members of the petitioner. In the earlier round of litigation, in W.P.No.4398/1996, which was filed challenging the rejection of the claim of the petitioners for compensation, the learned single Judge, by order dated 1.5.1997, has categorically held that unless the objections are considered and allowed, the petitioners are not entitled for compensation and pursuant thereto, as noted above, the Special Officer, allowed the objections of the petitioner, excluding the 5000 sq. mts of land over which the road was laid, from the family holdings of the petitioner. Therefore, as per the judgment of the learned single Judge dated 1.5.1997, the petitioner is entitled for compensation. But as there was in action on the part of the respondents, the petitioners made representation to the 1st respondent on 15.5.2002 for payment of compensation. As there was no response, filed the present writ petition before this court and when the said writ petition was dismissed on 25.8.2004 at the stage of

admission, carried the matter in appeal in W.A.No.1479/2004 and the Division Bench of this court by order dated 12.09.2011, set aside the order of the learned single Judge and as no counters were filed before the learned single Judge at the stage of admission, remitted the matter for fresh disposal after the VUDA and other respondents file their counter affidavits. The said order of the Division Bench is extracted as under for better appreciation:

> The writ appeal is by the petitioner against the *in limini* dismissal order passed by the learned Single Judge.
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> The petitioner, statedly, is the owner of ancestral property admeasuring Acs.09.40 cents in T.S.No.125, Block No.16 (part) of Visakhapatnam. The property jointly belongs to V.Chandra Chudamani Dev - father of the petitioner, and his family members. After coming into force of the Urban Land (Ceiling and Regulation) Act 1976 (the ULC Act), the petitioner and his family members filed declarations under Section 6(1) of the ULC Act being C.C.No.2449 of 1976 etc., declaring their respective shares of land in T.S.No.125. The Special Officer and Competent Authority (SO) under the ULC Act enquired into the same and issued a notice under Section 8(3) of the ULC Act along with the preliminary draft statement under Section 8(1) of the ULC Act inviting objections from the petitioner and others. On the ground that the objections were not filed, the final statement under Section 9 read with 8(4) of the ULC Act was issued followed by declarations under Sections 10(1) and 10(3) of the ULC Act, as well as notice under Section 10(5) of the ULC Act taking possession under Section 10(1) of the ULC Act. The petitioner and 11 others filed writ petition being W.P.No.4398 of 1996 against respondents 1 to 3 herein. It is necessary to notice that an extent of 5,000 sq. metres was allegedly utilized by the first respondent, namely, Visakhapatnam Urban Development Authority (VUDA) for the purpose of laying a road. This happened immediately after issuance of final statement in the earlier round. Be that as it is, presumably for this reason the petitioner contended that 5,000 sq. metres is the land on which no building is permissible and, therefore, it is not a vacant land.
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> By an order dated 01.05.1997 this Court disposed of W.P.No.4398 of 1996 directing the SO to consider the objections raised by the petitioners within two months from the date of receipt the said order. In obedience thereto, the SO passed orders on 07.12.2001 determining the vacant land in excess of the ceiling limit under the ULC Act. While doing so, the SO excluded an extent of 5,000 sq. metres covered by 100 feet wide Master Plan road from the holding of the family members of Late V.Chandra Chudamani Dev. The petitioner made a representation on 15.05.2002 requesting the VUDA for payment of compensation for 5,000 sq. metres, which was earmarked for the road in the Master Plan and which was allegedly used for laying down the road. As there was no response, he filed W.P.No.14989 of 2004 praying this Court to issue a writ of mandamus directing the respondents to pay compensation by initiating appropriate proceedings.
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> The learned Single Judge dismissed the writ petition at the admission stage observing as under.
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> Learned counsel for the petitioner contends that once the land cannot be treated as vacant land as held by the competent authority, petitioner still continues to the owner, but he cannot be deprived of the said land without being paid the compensation. In view of the same, respondents occupation of petitioner's property over an extent of 5,000 sq. mts. by the respondents without acquiring and paying compensation is unauthorized, illegal and violative of Articles 14 and 300-A of the Constitution of India. I see no force in the submission made by the learned counsel for the

petitioner. The petitioner cannot have an advantage of excluding the lands from the ceiling on the ground that the lands were taken possession of by the respondents for the purpose of roads which cannot be computed to his holding as vacant land and the same has to be excluded from his holding. After obtaining benefit of such exclusion, he cannot turn around and say that he is entitled for compensation for the lands which were excluded from holding were in possession of the respondents. The very filing of writ petition and submission made by the petitioner's counsel that the respondents possession is unauthorized, is nothing but speculative in nature.

In this appeal, the Senior Counsel for the appellant submits that the land on which construction of a building is not permissible as per the building regulations in force in the area cannot be treated as a vacant land for the purpose of the ULC Act and, therefore, the same cannot be treated as within the holding of the petitioner and his family members. When once the land does not form part of the vacant land, it is non-surplus holding and if the same is utilized by VUDA, the petitioner cannot be deprived of the compensation. Mere exclusion of the land from the holding of the petitioner and others does not divest them of their title and their deprivation without paying compensation is unconstitutional.

VUDA has not filed any counter affidavit before the learned Single Judge or in the writ appeal. The Standing Counsel for VUDA submits that as the land is earmarked for road in the Master Plan, VUDA is entitled to develop the same.

ULC Act is a regulatory legislation for imposition of ceiling on vacant land in urban agglomerations. The purpose is to prevent concentration of urban land in the hands of a few persons resulting in speculation and profiteering. Section 3 of the ULC Act declares that no person shall be entitled to hold any vacant land in excess of the ceiling limit as prescribed in Section 4. Section 5 renders any transfer of vacant land in excess of ceiling limits by way of sale, mortgage, lease or otherwise, null and void. Section 6 requires every person holding vacant land in excess of the ceiling limits to file a statement before the competent authority specifying the location, extent, value and other particulars as may be prescribed. Section 8 of the ULC Act empowers the SO to determine the land in excess of ceiling limits after conducting enquiry in accordance with the provisions of the ULC Act. After determination of the excess vacant land as per Sections 8(4) and 9 of the ULC Act, the land has to be acquired and taken possession in accordance with the provisions contained in Sections 10, and 11 of the ULC Act.

Thus, Sections 4 to 10 of the ULC Act specifically refer to vacant land and not urban land or agricultural land. If the land in urban agglomeration cannot be treated as urban land under Section 2(o) of the ULC Act and also as vacant land for the purpose of Section 2(q) of the ULC Act, the same cannot be included in the holding of a declarant. As per Section 2(o) of the ULC Act, "*urban land*" means any land situated within the limits of an urban agglomeration and referred to as such in the Master Plan; if there is no Master Plan or the land is not referred to as urban land in the Master Plan, any land within the limits of an agglomeration and situated in any area included within the local limits of a Municipality, a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, shall be urban land, but if the land is used mainly for agriculture purpose, it shall not be considered as urban land.

Section 2(q) of the ULC Act defines "*vacant land"* as under.

Vacant land means, land, not being mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) (i) land on which construction of a building is not permissible under the building regulations in force in the area in

which such land is situated;

(ii) (ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building.

A plain reading of the above would show that the land in an urban agglomeration, which is not mainly used for the purpose of agriculture, shall be vacant land. There are, however, three exceptions to this. Firstly, if the construction of a building is not permissible under the building regulations in force in the area in which it is situated the land cannot be vacant land. Secondly, in an area where there are building regulations, the land occupied by any building which has been constructed before the appointed day and the land appurtenant to such building and, thirdly, even if there are no building regulations, the land occupied by any building which has been constructed before coming into force of the Act and the land appurtenant thereto.

The petitioner contends that an extent of 5,000 sq. metres in T.S.No.125, Block No.16 (part) of Visakhapatnam was earmarked for 100 feet wide Beach road. The petitioner also relies on the order dated 07.12.2001 under Section 8(4) of the ULC Act passed by the SO for this purpose. A perusal of the same would show that an extent of 10,157.20 sq. metres is covered by 100 feet wide Beach road laid down by VUDA in the year 1980 having been earmarked for road in the Master Plan prepared by the then Town Planning Trust vide Map No.4, TP.No.59/65. Out of this an extent of 5078.60 sq. metres devolved on the family members of late V.Chandra Chudamani Dev. The SO, for this reason, excluded 5,000 sq. metres as it was earmarked for road in the Master Plan.

When the land owned by a declarant situated in the urban agglomeration cannot be considered as a vacant land, the declarant is entitled to seek its exclusion from the holding. It will be free from all encumbrances and if the land is taken by VUDA the person deprived of the land is entitled for compensation. We however hasten to add that it is a question to be gone into after the respondents filed their counter affidavits. As the writ petition was dismissed at the admission stage, we are inclined to allow the writ appeal setting aside the order of the learned Single Judge and remand the matter for fresh disposal after VUDA and other respondents file their counters.

The writ appeal is accordingly allowed and the matter shall stand remitted to learned Single Judge for fresh disposal. There shall be no order as to costs.

(Emphasis added by me)

23. From a reading of the above order, it is clear that the Division Bench considering facts of the case, Section 2(q) of the Act and the finding of the Special Officer in order dated 7.12.2001 with regard to exclusion of 5000 sq. mets, over which 100' beach road was laid by VUDA as per the master plan, as the same cannot be treated as vacant land, held that when the land owned by a declarant situated in the urban agglomeration cannot be considered as a vacant land, the

declarant is entitled to seek its exclusion from the holdings and it will be free from all encumbrances and if the land is taken by VUDA, the person deprived of the land is entitled to compensation. However, while setting aside the order of the learned single Judge, as the writ petition was dismissed at the stage of admission, remitted the matter back, enabling the respondents to file counter affidavits, for fresh disposal.

24. From the material on record and a perusal of the order dated 7.12.2011 passed by the Special Officer, shows that an extent of 10,157.20 sq. metres is covered by 100 feet wide beach road laid by VUDA in the year 1980, as the said land was earmarked for road in the then Town Planning Trust Vide Map No.4, TP.No.59/65 and for this reason, the Special Officer excluded this land from holdings of the (late) V.Durga Prasad Veerabhadra Deo and (late) V.Chandra Choodamani Deo and out of this 10,157.20 sq. mts., 5,000 sq. mts. fell to the share of the father of the petitioner. In the counter affidavits filed by the VUDA and GVMC, these facts were not disputed and the tenor of the counter affidavits would disclose that each of them are passing the buck and making the other respondent, responsible for payment of compensation. This cannot be appreciated and laying of road by VUDA without acquiring the same from land owners, by following the due process of law, amounts to violating Article 300-A of the Constitution of India.

25. In view of the above facts and circumstances, the issue framed is answered in the affirmative and the writ petition is allowed and consequently, the 1st respondent – V.U.D.A., is directed to initiate land acquisition proceedings and after complying with the statutory procedure as laid down under the Land Acquisition Act, 1894, award shall be passed within a period of six months from the date of receipt of a copy of this order.

26. Miscellaneous petitions pending, if any, shall stand closed.

27. No order as to costs.

AVS

30—04—2013